

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TRAVIS CARRICO, MARK BRYANT and ROBERT WILSON, JR.

Appeal No. 2001-1875
Application No. 09/193,257

ON BRIEF

Before COHEN, FRANKFORT, and MCQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 12, all of the claims pending in this application.

Appellants' invention relates to a method of playing a multi-draw, poker-type card game that may be played as either a table game or a computer video game in a casino using a

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single, conventional 52-card deck or a computer simulation of such a deck. Claim 1 defines a method of play involving a computer and video display screen, while claim 7 defines a table game method of play. Independent claims 1 and 7 are representative of the subject matter on appeal and a copy of those claims may be found in the Appendix to appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the claims on appeal are:

Wood	4,743,022	May
10, 1988		
Weingardt	5,042,818	Aug.
27, 1991		
Miller	5,255,915	Oct. 26,
1993		

Scarne, John; Scarne's Encyclopedia of Card Games; 1983, Harper & Row, Publishers: New York, pp. 14-15, 31.

Claims 1, 4, 5, 7, 9 and 12 stand rejected under 35 U.S.C.

§ 103(a) as being unpatentable over Wood in view of Scarne, more particularly, Scarne's "Pokino" game (page 31).

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Claims 2, 6, 8 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wood in view of Scarne, more particularly, Scarne's "Pokino" game (page 31), and further in view of Miller.

Claims 3 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wood in view of Scarne, more particularly, Scarne's "Pokino" game (page 31), and further in view of Weingardt.

Rather than reiterate the examiner's specific comments regarding the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding those rejections, we make reference to the examiner's answer (Paper No. 9, mailed October 10, 2000) for the reasoning in support of the rejections, and to appellants' brief (Paper No. 8, filed August 25, 2000) and reply brief (Paper No. 10, filed December 5, 2000) for the arguments thereagainst.

OPINION

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In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that the examiner's above-noted rejections under 35 U.S.C. § 103(a) will not be sustained. Our reasons follow.

In considering the examiner's rejection of claims 1, 4, 5, 7, 9 and 12 under 35 U.S.C. § 103(a), we are in agreement with the examiner that Wood teaches (col. 1, line 67 - col. 2, line 22) a method of playing a multi-draw poker-like game where first and second payout tables are used (i.e., a first table having first posted odds associated with a fixed hand ranking for the first and second hands and a second table having a second set of posted odds associated with the fixed hand ranking for the third hand). However, after assessing the collective teachings of the applied prior art, we find that we are in full agreement with appellants' position that the 2nd Chance poker game described in Wood and the "Pokino" card game described in Scarne's Encyclopedia of Card Games are

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so different and have such different basic premises, that it would not have been obvious to one of ordinary skill in the art at the time of appellants' invention to combine those card games in the manner urged by the examiner. Like appellants, it is our view that the examiner is using the hindsight benefit of appellants' own disclosure to combine these seemingly unrelated poker-type card games in an attempt to reconstruct appellants' claimed subject matter.

Since we have determined that the teachings and suggestions found in Wood considered together with those of Scarne's "Pokino" game would not have made the subject matter as a whole of either of claims 1 or 7 on appeal obvious to one of ordinary skill in the art at the time of appellants' invention, we must refuse to sustain the examiner's rejection of those claims under 35 U.S.C. § 103(a). It follows that the examiner's rejection of dependent claims 4, 5, 9 and 12 under 35 U.S.C. § 103(a) based on Wood in view of Scarne also will not be sustained.

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As for the examiner's rejections of claims 2, 6, 8 and 10, and claims 3 and 11 under 35 U.S.C. § 103(a), we have reviewed the teachings of both Miller and Weingardt, but find nothing in those references which provides for that which we have found lacking in the basic combination to Wood and Scarne. Accordingly, the examiner's rejections of dependent claims 2, 3, 6, 8, 10 and 11 under 35 U.S.C. § 103(a) will not be sustained.

In light of the foregoing, the decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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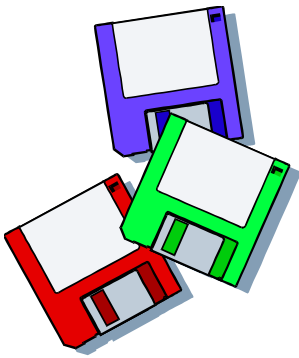
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JOHN P. MCQUADE)
Administrative Patent Judge)

CEF/LBG

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APJ MCQUADE

APJ COHEN

DECISION: REVERSED

Prepared: September 10, 2002

Draft Final

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